IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6638 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANJI AATAJI THAKORE & 3 - Petitioner(s)
Versus
EXECUTIVE ENGINEER & 2 - Respondent(s)

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Appearance :
MR MEHUL SHARAD SHAH for Petitioner(s) : 1 - 3.
MR PARESH UPADHYAY for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners who were serving as Tube-well Operator (Patalkuva Operator) under the respondent Nos.1 and 2, have prayed for an appropriate

order quashing and setting aside the orders at Annexure B by which the applications submitted by the respective petitioners for voluntary retirement have been accepted. Petitioners have also further prayed for an appropriate order directing the respondent authorities to sell tube well to the petitioners at the purchase price fixed by the respondents. In the alternative, it is also prayed for an appropriate order directing the respondent authorities to reinstate the petitioners on their original post with all benefits accrued therefrom by quashing and setting aside the impugned orders dated 4-7-1998 by which the applications submitted by the respective petitioners for voluntary retirement have been accepted.

2. The facts narrated in the Special Civil Application on behalf of the petitioners are as under:

Petitioner No.1 was appointed as “Patalkuva Operator” in Water Resources Department (Jal Sampati Nigam) in 1979 and since then he was working at Jagatpur Patalkuva No.S-22, Block No.28, Tal: Daskroi. Petitioner No.2 was appointed as “Patalkuva Operator” in the Nigam in 1976 and since then he was working at Khoraj Patalkuva No.32, Tal: Daskroi. Petitioner No.3 was appointed as

“Patalkuva Operator” in 1974 and since then he was working as “Patalkuva Operator” at Bareja Patalkuva No.FAB-2. Petitioner No.4 was appointed as “Patalkuva Operator” in the department in 1974 and since then he was working at Badodara Patalkuva No.TAB 40, Tal: Dascroi, Dist: Ahmedabad. That all the petitioners were working as Operators of Patalkuva (tube well) since last 10 years. They were required to maintain tube wells and were required to keep records regarding supply of water to the farmers. That all the petitioners were working sincerely, honestly and diligently and no adverse remarks and/or complaints were made against them. That they were told in the month of November 1997 that if they are ready and willing to accept the Voluntary Retirement Scheme (VRS), Nigam is ready and willing to sell tube well to them. That the petitioners under a bona fide belief and relying upon the oral words given by the respondents, made applications-cum-consent letters to the respondent authorities *inter alia* stating that they are ready and willing to buy and purchase tube wells and the said amount may be deducted from the voluntary retirement benefits that may be accrued to them. That to their utter shock and surprise, all of a sudden without any proper intimation, they received an order dated 4-7-1998 passed

by the Administrative Officer of respondent No.2, Nigam in pursuance of the 118th meeting of the Nigam dated 3-7-1998 and the same were received by the respective petitioners on 6-7-1998 and they also came to know that their request for voluntary retirement is accepted. But the order at no point of time mentions about selling of the tube-wells to the present petitioners. That immediately on 9-7-1998, the petitioners were also told that they are entitled to all the necessary benefits under the VRS. That no sooner, they came to know about the said fraud played upon them by the respondent authorities, they immediately and promptly gave an application on 7-7-1998 to the respondents *inter alia* stating that they are not ready and willing to accept VRS, if the respondents are not willing to sell tube wells to the petitioners. That it was a specific contention of the petitioners in their application dated 7-7-1998 that they had accepted the VRS only on the ground that they would be given tube wells which they were ready and willing to purchase and only if the respondents were ready and willing to sell the same to the petitioners. That it was the condition precedent in the applications made by the petitioners that they would be accepting the VRS only if the tube wells were sold to

them. It is the case of the petitioners that subsequently they came to know after their retirement that the Government has passed a resolution dated 15-11-1989 in respect of tube wells and with respect to that, the Government has also framed certain Rules and Regulations. It is the case of the petitioners that since they were tube well operators and they had to work in the field and not in administrative department, they were not made aware of the said resolution and they were kept in dark regarding the same and in hush-up manner, the entire formalities regarding voluntary retirement were carried out by the respondents in order to see that the petitioners are not in a position to buy the tube wells. That being aggrieved by the aforesaid orders/ communication, by which the petitioners were informed that their applications for resignation have been accepted and when they are not sold the tube wells, the petitioners have preferred this Special Civil Application for the aforesaid reliefs.

3. Shri Mehul S.Shah, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that the petitioners were duped by the respondents by snetching away long period of more than 20

year of services of the petitioners in the name of VRS. It is further submitted by him that all the petitioners were assured of their right to purchase the tube wells and pursuant to the scheme, they accepted the voluntary retirement. It is also further submitted by him that as such, the voluntary retirement applications submitted by the petitioners were not in prescribed format and in a prescribed manner and therefore, the action of the respondents in accepting their applications which were not in prescribed formate is illegal and requires to be quashed and set aside. It is submitted by Shri Shah, that the petitioners were made to understand that on accepting the voluntary retirement, all the petitioners will be sold the tube wells and it was in fact a condition precedent for accepting their applications for voluntary retirement and by not selling the tube wells along with acceptance of their applications for voluntary retirement, all the petitioners are duped and they are required to be re-employed on their original post. It is also further submitted that so far as petitioner No. 4 is concerned, in the application for voluntary retirement itself, it was specifically mentioned that his application for voluntary retirement will be considered only on selling the tube wells to him and, therefore, the

said application was conditional one and when the tube well is not sold to the petitioner NO. 4, the action of the respondents in accepting the application for voluntary retirement is absolutely illegal and arbitrary. It is also further submitted that at the relevant time the VRS was introduced by submitting that the respondent Nigam is likely to be closed and after acceptance of the voluntary resignation still Nigam is working and that it is not closed and to that extent also, there was a mis-representation and the petitioners were also misled and therefore, it is requested to quash and set aside the impugned orders and direct the respondents to re-employ the respective petitioners to their original post with all consequential benefits available to them flowing therefrom. It is also further submitted that even the conduct of the respondents in accepting the voluntary retirement applications and that retirement benefits in a greater speed also requires to be appreciated. It is submitted that their applications were accepted on 4-7-1998 and immediately within a span of 6 days, the benefits are paid. It is further submitted that the resolution dated 8-9-1997, which speaks about benefits of VRS, wherein no mention whatsoever is made regarding selling of the tube well to any persons who are ready and

willing to accept the VRS, was never brought to the notice of the petitioners and/or the petitioners were never made aware of the said resolution. Under the circumstances, it is requested to allow the present Special Civil Application by quashing and setting aside the impugned orders by which the applications of the petitioners for voluntary retirement have been accepted and the petitioners are not sold the tube wells and it is requested to direct the respondents to reinstate/re-employ the petitioners.

4. Petition is opposed by the respondents. An affidavit-in-reply is also filed on behalf respondent No.2. It is submitted in the reply that VRS and the sell of tube well to the persons as per the categories mentioned in the Government resolution dated 15-11-1997 are two different schemes and neither of the schemes is dependent on each other. It is submitted that the Government resolution dated 15-11-1997 clearly stipulates under what circumstances and to whom the tube well is available for sale, if the same is decided to be sold by the authorities of the Corporation. It is submitted that merely because the petitioners have opted for voluntary retirement, that itself does not entitle the petitioners

to claim the tube well, if otherwise, it is not available to them as per the scheme of the Government. So far as VRS of the Corporation is concerned, it is submitted that the respondent Corporation had issued one circular on 8-9-1997 in which it was pointed out to the concerned employees that they are entitled for the following benefits if they opt for voluntary retirement, such as amount at the credit of the employee in the Provident Fund Account as per rules; encashment of leave as per the rules of the Corporation; amount of gratuity which is admissible as per payment of Gratuities Act; (a) ex gratia payment of an amount equal to 35 days emoluments for each completed year of service, and same way ex gratia amount equal to 25 days emoluments for each year of service which yet to be put in by the concerned employee, or (b) total emoluments for the period, from the date of voluntary retirement till date of normal (superannuation) retirement, whichever is less. It is submitted that pursuant to the said circular dated 8-9-1997, some of the employees have applied for voluntary retirement and the petitioners are amongst those persons who had opted for voluntary retirement as against the assurance of the payment of above four benefits pursuant to the said circular. It is also further submitted that

Government had also decided by resolution dated 27-11-1997 to float the VRS wherein the benefits were on the same lines which were decided to be given by the Corporation to its employees in case of voluntary retirement. It is also further submitted in the reply that the issue of applications for voluntary retirement of the employees was considered by the Corporation in its Board meeting dated 3-7-1998 and it was decided to accept the request of the petitioners and similarly situated persons for the voluntary retirement and the benefits decided by the Corporation and circulated amongst its employees vide circular dated 8-9-1997 were decided to be paid to the such employees. It is further submitted that pursuant to the said decision taken in the Board meeting of the Corporation, it was decided to accept the applications of voluntary retirement of the petitioners and similarly situated persons and accordingly the impugned administrative orders were passed. It has also been submitted that the benefits which were admissible to such employees including the petitioners on the basis of the Scheme and Circulars of the Government/Corporation were paid to them by the Corporation. It is also further submitted that so far as grant of tube well to its employees was at no point of time a part of retirement

benefit under the VRS and thus by not granting it, Corporation has not committed any illegality. It is further submitted that after accepting the money and enjoying the same, the petitioners can not approbate and reprobate at their own sweet Will. It is submitted that the Corporation has acted in accordance with the scheme circulated amongst the employees and no arbitrariness or discrimination is involved in accepting the request of the petitioners for voluntary retirement. Therefore, it is requested to dismiss the Special Civil Application.

5. Shri Paresh Upadhyay, learned advocate appearing on behalf of the respondent Nos.1 and 2 has submitted that there was no hurry shown by the respondents as alleged in the Special Civil Application. It is submitted that the applications of the petitioners were in the month of November 1997. However, the same came to be considered by the Board in its meeting held in the month of July 1998, more particularly on 3-7-1998. It is also further submitted that even the applications of the respective petitioners were after the scheme for allotment/selling the tube well on priority basis and one of the condition for getting the priority was that the tube well Operator who opts for voluntary retirement, then and then only his

case for selling the tube well on priority basis of that very tube well where he was working, was required to be considered and it might be that considering the same to be more beneficial and considering the said condition, the petitioners had applied for voluntary retirement and have submitted in their applications that if ultimately they are sold tube well, then the amount to be paid, may be adjusted from the amount which is required to be paid towards retirement benefits. It is submitted that when subsequently having realized that they might not even get the tube well as they were required to be given the priority, subsequently they have changed their mind which is not permissible and therefore, it is requested to dismiss the present Special Civil Application with cost.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. The respondent Nos.1 and 2 Nigam came out with VRS dated 8-9-1997. Under the said scheme, the employees, who opt for VRS, were entitled for the following benefits.

(1)Amount at the credit of the employee, in the Provident Fund Account as per rules; and

(2)Encashment of leave as per the rules of the

Corporation; and

(3)Amount of gratuity which is admissible as per payment of Gratuities Act; and

(4)(a) ex gratia payment of an amount equal to 35 days emoluments for each completed year of service, and same way ex gratia amount equal to 25 days emoluments for each year of service which yet to be put in by the concerned employee, or

(b) total emoluments for the period, from the date of voluntary retirement till date of normal (superannuation) retirement, whichever is less.

In the VRS, there is no mention with regard to selling of the tube well to the respective employees who opt for voluntary retirement. The scheme does not provide that the VRS is depending upon the selling of the tube well to the respective employees who opt for voluntary retirement and/or that the same is a conditional precedent. For the purpose of selling and/or disposing of the tube wells, the State Government has come out with resolution dated 15-11-1997. The Government resolution dated 15-11-1997 provides for priority and the Operators attached with the concerned tube well were also entitled to priority but they were at serial No.3 and above them,

the voluntary organization recognized by the State Government and the cooperative societies of the farmers are also given priority above the tube well operators. As per condition No.9, only those tube well operators, who opt for voluntary retirement were required to be sold the tube well as per the priority mentioned in category 3 of the Priority Clause. Thus, considering the Government resolution dated 15-11-1997 only those tube well operators, who opt for voluntary retirement, were entitled to get tube well on sale on the basis of the priority mentioned in clause 3 of Priority Clause. It appears that it might be that all the petitioners might have thought that the same will be more beneficial to them and therefore, they submitted applications for voluntary resignation, so that their case can be considered for selling of the concerned tube wells which are required to be sold on priority basis as per the Priority Clause. It is also required to be noted at this stage that their applications were subsequent to the Government resolution dated 15-11-1997 which provides for the aforesaid conditions. Petitioner would have been justified in contending that they were made to understand that on accepting the VRS, they will be sold the concerned tube well if their applications were between 8-

9-1997 and 15-11-1997. However, their applications for VRS were after 15-11-1997 i.e. State Government's policy dated 15-11-1997 pertaining to sale of tube wells on priority basis which is very clear. Under the circumstances, the contention cannot be accepted. As stated above, the Government resolution dated 15-11-1997 stipulates one of the condition for priority that an employee who has opted for VRS only, is entitled to purchase the concerned tube well on priority basis. It is also required to be noted that even as per the Government resolution dated 15-11-1997, only concerned tube wells were required to be sold to the tube well operators where they were actually working and not any other tube well. It is also required to be noted at this stage that in the applications, the respective petitioners have mentioned that the purchase price may be adjusted from the amount to be paid to the respective petitioners by way of retirement benefits. It is the contention on behalf of the petitioners that by providing such a clause, there was a condition precedent of accepting the voluntary retirement clause that they will be sold the tube wells on outright basis. The said contention cannot be accepted. On reading the respective applications, it can also be said that what is suggested by the respective

petitioners is, (except petitioner No.4), that if tube wells are sold to them and the purchase price is fixed, the same may be adjusted from the amount which is required to be paid by way of retirement benefits. In the applications, it is nowhere mentioned that only on selling the tube wells, their applications may be considered for voluntary retirement (except petitioner No.4, whose case will be dealt with hereinafter). Thus, it appears that subsequently on acceptance of the voluntary retirement applications, they might have apprehended that on priority basis they might not get tube wells and therefore, they came out with a case that as the tube wells are not sold to them, their applications for voluntary retirement ought not to have been considered. On considering the VRS dated 8-9-1997 and the Government resolution dated 15-11-1997, there was no representation that the VRS is depending upon selling the tube wells and/or it is a condition precedent of selling the tube wells and/or at the time of acceptance of voluntary resignation, they will be sold the concerned tube wells. If the petitioners have understood otherwise, the petitioners have to thank themselves. In the entire petition, there is no reference who made them understand in aforesaid manner. Under the circumstances, once the

voluntary resignations have been accepted in accordance with the policy of the Corporation and the State Government, it cannot be said that the Corporation has acted in any manner arbitrarily and/or dehors the policy and/or the Government resolution.

8. It is also required to be noted at this stage that after the communication dated 4-7-1998, all the petitioners are repaid their retirement benefits as per the VRS dated 8-9-1997 and all the petitioners have accepted the same without any protest and therefore, also now it is not open for the petitioners to challenge their acceptance of voluntary retirement. Now, it is the contention of the petitioners that they were not made aware about the VRS dated 8-9-1997. However, on considering the applications for VRS dated 8-9-1997 referred to above, it is specifically mentioned that the said application is pursuant to the aforesaid scheme dated 8-9-1997 and that they are aware about the retirement benefits that may be available to them on voluntary retirement. Under the circumstances, the contention on behalf of the petitioners that they were not made aware about the VRS dated 8-9-1997 cannot be accepted. It is also required to be noted and as stated

above, that except petitioner No.4, so far as other petitioners are concerned, it is nowhere mentioned that their applications are subject to selling the tube wells.

9. So far as the contention on behalf of the petitioners that their applications for voluntary retirement were not in prescribed format and therefore, the respondent Corporation ought not to have acted upon the same, is concerned, once the petitioners had submitted applications for voluntary retirement, it is not open for the petitioners to contend that their applications were not in accordance with prescribed format. If the same were not in prescribed format, then the Corporation can reject the same but the petitioners cannot contend that their applications for voluntary retirement ought not to have been considered by the Corporation, which was not in prescribed format. Once they have applied for voluntary retirement and subsequently, it is accepted, it will not lie in the mouth of the petitioners that the same ought not to have been considered.

10. So far as the case of the petitioner No.4 is concerned, it is true that at the bottom, it is mentioned

that if the tube well is sold, he is agreeable to accept the voluntary retirement. However, at the same time, it is also required to be noted that he has accepted all the retirement benefits i.e. Rs.2,31,573/- on 10-7-1998 without any objection and that the aforesaid amount is without CPF which was also directly paid by the Corporation to him, which has been accepted by him without any objection and/or protest. When a pointed question was asked to the learned advocate appearing on behalf of the petitioners that whether anywhere in the petition, it has been mentioned by the petitioners that they have accepted the retirement benefits under protest or not, the learned advocate appearing on behalf of the petitioners was constrained to concede that in the petition, there are no such averment and/or even there is no communication to that effect also. Under the circumstances, once they have accepted all the retirement benefits without protest and/or without any objection and more than 8 years are passed, even petitioner No.4 is not entitled to any relief as prayed for. It is required to be noted that initially, the learned Single Judge of this Court while admitting the present Special Civil Application on 30th September 1998 granted interim order directing the respondents to reemploy the petitioners on

each of them re-depositing the amount received by them under the VRS or provide tube well on the basis of their claim under the circular in question. However, subsequently, the said interim order was challenged by way of LPA No.1265 of 1998 before the Division Bench of this Court and the Division Bench of this Court allowed the said appeal by order dated 15-10-1998 by observing that *prima facie* it appears that the allotment of tube well was not one of the condition of VRS of the Corporation and the same is disputed by the respondents and accordingly, the interim order dated 30th September 1998 was stayed during the pendency of the aforesaid Special Civil Application.

11. For the reasons as stated above, the petition is required to be dismissed. However, before parting with this judgment, it is observed that if the petitioners are entitled to the tube wells on priority basis as per the Government resolution dated 15-11-1997 and the State Government has deviated from the said resolution and there is any grievance that the tube wells are sold dehors the priority mentioned in the Government resolution dated 15-11-1997 and/or if there is any other grievance with regard to selling the tube wells, it will

be open for the respective petitioners to challenge the said action on making out a proper case and on dismissal of the present Special Civil Application, it may not be construed that this Court has expressed any opinion with regard to the same.

12. With these and for the reasons as stated above, the present Special Civil Application is dismissed. Rule is discharged. No costs.

(M.R.SHAH,J.)

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